

Exhibit 222

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
Master File No. 1:17-cv-00916-RA-BCM

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In re:
GLOBAL BROKERAGE
F/K/A FXCM, INC.
Securities Litigation

8

Virtual Zoom Deposition

10

November 20, 2020

11

9:30 a.m.

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14 DEPOSITION of PATRICIA MUCHINSKY, in the
15 above-entitled action, held at the above
16 time and place, taken before Jeremy
17 Richman, a Shorthand Reporter and Notary
18 Public of the State of New York, pursuant
19 to the Federal Rules of Civil Procedure,
20 and stipulations between Counsel.

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<p>1 CONFIDENTIAL - MUCHINSKY</p> <p>2 invoice route with Goldman, I want to</p> <p>3 say, Goldman Sachs, at one point. We</p> <p>4 did try the invoice route, but it</p> <p>5 became onerous to do that every month,</p> <p>6 when -- and then we moved to a</p> <p>7 different arrangement with Goldman.</p> <p>8 But that was the only instance. This</p> <p>9 instance and maybe the Goldman instance</p> <p>10 were the only times I was involved, and</p> <p>11 it was more of an involvement from, can</p> <p>12 you verify the volume figures, than</p> <p>13 anything else.</p> <p>14 Q. Understood. Would -- the</p> <p>15 invoices you referenced to Goldman, do</p> <p>16 you remember what time period that was?</p> <p>17 A. I don't. And I think it was</p> <p>18 only one or two invoices.</p> <p>19 Q. Do you recall what the basis</p> <p>20 for those invoices was?</p> <p>21 A. We had a -- it was a similar</p> <p>22 type of rebate structure, I want to</p> <p>23 say, that we had in place. I don't</p> <p>24 remember the direction of the invoice</p> <p>25 saying -- it was a while ago, but</p>	Page 102	<p>1 CONFIDENTIAL - MUCHINSKY</p> <p>2 A. It was similar in the -- I</p> <p>3 don't remember the details, if it was a</p> <p>4 straight up dollar per million. I</p> <p>5 believe it was, but I don't know if it</p> <p>6 was. I don't remember exactly what the</p> <p>7 fee was with Goldman.</p> <p>8 Q. Do you remember if it was</p> <p>9 based on the volume of retail trading</p> <p>10 that Goldman transacted --</p> <p>11 A. Yes.</p> <p>12 Q. -- with FXCM?</p> <p>13 A. Yes.</p> <p>14 Q. Do you recall, on a relative</p> <p>15 basis, the amount of volume that</p> <p>16 Goldman transacted with FXCM compared</p> <p>17 to EFFEX?</p> <p>18 A. At one point it was probably</p> <p>19 similar.</p> <p>20 Q. When you say, at one point,</p> <p>21 what time period, generally, are we</p> <p>22 talking about?</p> <p>23 A. Maybe a couple years before</p> <p>24 this.</p> <p>25 Q. This, meaning 2010?</p>	Page 104
<p>1 CONFIDENTIAL - MUCHINSKY</p> <p>2 rather than having the invoices going</p> <p>3 back and forth, we just changed to</p> <p>4 markups instead.</p> <p>5 Q. So and so on rebates.</p> <p>6 A. To what we had with EFFEX.</p> <p>7 Q. And what was the basis --</p> <p>8 sorry, were you done?</p> <p>9 A. No, go ahead.</p> <p>10 Q. What was the basis for the</p> <p>11 EFFEX rebates?</p> <p>12 A. It was just a dollar per</p> <p>13 million.</p> <p>14 Q. Dollar per million of what?</p> <p>15 A. Volume traded.</p> <p>16 Q. So a -- the EFFEX invoices</p> <p>17 were a rate of, certain rate of dollars</p> <p>18 per million based on the volume that</p> <p>19 EFFEX traded. Is that with FXCM retail</p> <p>20 customers?</p> <p>21 A. Yes.</p> <p>22 Q. Was that the same for</p> <p>23 Goldman?</p> <p>24 A. Similar.</p> <p>25 Q. How was it different?</p>	Page 103	<p>1 CONFIDENTIAL - MUCHINSKY</p> <p>2 A. Yes.</p> <p>3 Q. Between 2010 and 2014, do you</p> <p>4 know if -- let me break this up.</p> <p>5 Between 2010 and 2014, do you know if</p> <p>6 Goldman continued to make payments on</p> <p>7 the volume of FXCM retail trading?</p> <p>8 A. No. We'd only -- the</p> <p>9 invoicing arrangement was very</p> <p>10 short-lived with Goldman. It might</p> <p>11 have only been a month or two.</p> <p>12 Q. Were you aware of the</p> <p>13 payments from Goldman, whether or not</p> <p>14 it was through invoices, continued in</p> <p>15 the 2010 through 2014 time period?</p> <p>16 A. They don't, they didn't.</p> <p>17 Q. Are you aware of any other</p> <p>18 liquidity provider who made payments to</p> <p>19 FXCM based on the volume of FXCM retail</p> <p>20 trading during the 2010 to 2014 time</p> <p>21 period?</p> <p>22 A. Not through invoices.</p> <p>23 Q. Were there liquidity</p> <p>24 providers who made those payments aside</p> <p>25 from the invoices?</p>	Page 105

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<p>1 CONFIDENTIAL - MUCHINSKY</p> <p>2 A. Well, it wasn't, like, a</p> <p>3 payment as such, it was more like they</p> <p>4 were given a lower markup.</p> <p>5 Q. Do you remember who those</p> <p>6 liquidity providers were?</p> <p>7 A. There were a number.</p> <p>8 Q. Do you remember any</p> <p>9 specifically?</p> <p>10 A. Yes. Dresdner Bank, Deutsche</p> <p>11 Bank, Goldman Sachs, Morgan Stanley.</p> <p>12 Q. Did EFFEX also receive a</p> <p>13 lower markup during the 2010 to 2014</p> <p>14 time period?</p> <p>15 A. Maybe.</p> <p>16 Q. Aside from any arrangement</p> <p>17 similar to the other banks that you</p> <p>18 referenced, do you recall if EFFEX's</p> <p>19 markup was different, higher, lower,</p> <p>20 than other liquidity providers in that</p> <p>21 time period?</p> <p>22 A. We had a number of providers</p> <p>23 who were preferenced through the</p> <p>24 markups in our liquidity pool. It was</p> <p>25 a standard offering that we made to</p>	Page 106	<p>1 CONFIDENTIAL - MUCHINSKY</p> <p>2 A. I'm sure at one point they</p> <p>3 did, but it wasn't across the board.</p> <p>4 Q. Across the board meaning</p> <p>5 across different currency pairs?</p> <p>6 A. Yes, because we had some</p> <p>7 providers that would show us better</p> <p>8 pricing, so they had a lower markup in,</p> <p>9 say, Eurodollar, right, some that would</p> <p>10 show us a better pricing in dollar CAD,</p> <p>11 so they would be preferenced, and so on</p> <p>12 and so forth. Some in -- some that</p> <p>13 showed us deeper liquidity also might</p> <p>14 have a more favorable markup, because</p> <p>15 they showed us more liquidity.</p> <p>16 Q. Was this new markup reference</p> <p>17 separate or independent from a priority</p> <p>18 ranking of liquidity providers that</p> <p>19 applied when liquidity providers would</p> <p>20 tie or offer the same price?</p> <p>21 MS. COREY: Objection to</p> <p>22 form.</p> <p>23 A. It would be independent.</p> <p>24 Q. Okay. And we'll talk about</p> <p>25 the priority more later, okay? Going</p>	Page 108
<p>1 CONFIDENTIAL - MUCHINSKY</p> <p>2 every single liquidity provider on the</p> <p>3 street in order to get more competitive</p> <p>4 pricing.</p> <p>5 Q. So offering a lower markup</p> <p>6 for a liquidity provider was an</p> <p>7 incentive; do I understand you</p> <p>8 correctly?</p> <p>9 A. It was an incentive in the</p> <p>10 sense -- yes, it was. It was an</p> <p>11 incentive, and it cost FXCM money, if</p> <p>12 you want to think of it that way, in</p> <p>13 the sense that we wouldn't make -- if</p> <p>14 that provider received a lower markup</p> <p>15 in exchange for showing tighter prices,</p> <p>16 they would be more likely to be at the</p> <p>17 top of book, meaning they would see</p> <p>18 more flow. They would see, they would</p> <p>19 be preferenced in the liquidity stack.</p> <p>20 And it was something that was offered</p> <p>21 to every provider.</p> <p>22 Q. Do you recall if EFFEX</p> <p>23 specifically had lower markups than</p> <p>24 other liquidity providers in the 2010</p> <p>25 to 2014 time period?</p>	Page 107	<p>1 CONFIDENTIAL - MUCHINSKY</p> <p>2 back to the document, the email chain</p> <p>3 here, Exhibit 6. Who else was usually</p> <p>4 involved in preparing or sending</p> <p>5 invoices to EFFEX?</p> <p>6 A. Josh or someone on his team.</p> <p>7 Q. Josh Rosenfeld?</p> <p>8 A. Yes.</p> <p>9 Q. Anyone else in particular</p> <p>10 that you recall working with?</p> <p>11 A. I recall this being a</p> <p>12 one-off, potentially. I don't remember</p> <p>13 doing this on a regular basis.</p> <p>14 Q. And if I understood you</p> <p>15 correctly, you previously testified</p> <p>16 that you don't recall FXCM sending</p> <p>17 these type of invoices to any other</p> <p>18 liquidity providers in the 2010 to 2014</p> <p>19 time period?</p> <p>20 A. Don't recall, no.</p> <p>21 Q. In this email chain Mr.</p> <p>22 Rosenfeld represents FXCM Holdings. Is</p> <p>23 that the entity we talked about</p> <p>24 earlier, the parent company of FXCM</p> <p>25 U.S.?</p>	Page 109

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<p>1 CONFIDENTIAL - MUCHINSKY</p> <p>2 providers who are eating away the top</p> <p>3 of book with aggressive skewed pricing,</p> <p>4 what do you mean there?</p> <p>5 A. With aggressive skewed</p> <p>6 pricing, yeah, one or more providers,</p> <p>7 right, in this case, we had John and we</p> <p>8 had BNP, who were aggressively showing</p> <p>9 skewed pricing and taking the</p> <p>10 top-of-book flow.</p> <p>11 Q. What do you mean by, showing</p> <p>12 aggressive skewed pricing?</p> <p>13 A. So when you skew a price, it</p> <p>14 means you have a specific interest to</p> <p>15 buy or sell one way or the other. So</p> <p>16 by skewing your price, you're</p> <p>17 essentially showing your interest by</p> <p>18 showing a really aggressive price,</p> <p>19 either on the bid or on the offer.</p> <p>20 Q. And -- sorry, go ahead.</p> <p>21 A. That's typically what John</p> <p>22 and BNP were doing, right, was showing</p> <p>23 aggressive pricing.</p> <p>24 Q. And was that the principal</p> <p>25 reason that EFFEX was capturing the --</p>	<p>Page 158</p> <p>1 CONFIDENTIAL - MUCHINSKY</p> <p>2 A. Yes.</p> <p>3 Q. Thank you. If you look up to</p> <p>4 Mr. Niv's email, where he says, Lump</p> <p>5 all funds like Sun, Lucid and EFFEX</p> <p>6 into one bucket, and tell the banks</p> <p>7 it's three funds. We share the pie,</p> <p>8 don't give specifics.</p> <p>9 Did you understand Mr. Niv to</p> <p>10 mean that Sun and EFFEX were similar</p> <p>11 funds?</p> <p>12 MS. COREY: Objection to</p> <p>13 form.</p> <p>14 THE WITNESS: Sorry, Chelsea.</p> <p>15 MS. COREY: Go ahead.</p> <p>16 A. I read this as he was telling</p> <p>17 me not to change anything, not to</p> <p>18 exclude anyone.</p> <p>19 Q. And did you consider Sun and</p> <p>20 EFFEX to be similar types of funds?</p> <p>21 A. They were similar in their</p> <p>22 trading style, yes, and they were</p> <p>23 high-frequency.</p> <p>24 Q. Were there any other</p> <p>25 similarities or commonalities other</p>
<p>1 CONFIDENTIAL - MUCHINSKY</p> <p>2 a predominant share of EFFEX's retail</p> <p>3 overflow?</p> <p>4 MS. COREY: Objection to</p> <p>5 form.</p> <p>6 A. I guess. I don't know how</p> <p>7 his algo -- or how he was pricing.</p> <p>8 Q. Was -- so in this discussion</p> <p>9 between you, Mr. Niv and Mr. Ahdout of</p> <p>10 how to present share figures to</p> <p>11 liquidity providers, is this something</p> <p>12 that was a one-time conversation that</p> <p>13 was resolved, or is this an ongoing</p> <p>14 discussion that you would have on</p> <p>15 multiple occasions?</p> <p>16 A. I think it was ongoing.</p> <p>17 Q. I'm sorry, I didn't hear, you</p> <p>18 think it was ongoing?</p> <p>19 A. I think it was ongoing, yes.</p> <p>20 Q. Before you said, just to</p> <p>21 clarify in your previous answer, you</p> <p>22 were referring to Mr. Dittami's algo.</p> <p>23 Is that algorithm?</p> <p>24 A. Yes.</p> <p>25 Q. EFFEX's trading algorithm?</p>	<p>Page 159</p> <p>1 CONFIDENTIAL - MUCHINSKY</p> <p>2 than being high-frequency trading --</p> <p>3 traders, excuse me?</p> <p>4 A. Well, by virtue of being</p> <p>5 non-banks, they would be.</p> <p>6 Q. Did Sun have a relationship</p> <p>7 at FXCM that was different from most</p> <p>8 other liquidity providers?</p> <p>9 A. No.</p> <p>10 Q. Any of these three funds,</p> <p>11 Sun, Lucid or EFFEX?</p> <p>12 MS. COREY: Objection to</p> <p>13 form.</p> <p>14 Q. Let me clarify. Did any of</p> <p>15 those three funds; Sun, Lucid or EFFEX;</p> <p>16 have a relationship with FXCM that</p> <p>17 differed from FXCM's relationship with</p> <p>18 most other liquidity providers?</p> <p>19 MS. COREY: Objection to</p> <p>20 form.</p> <p>21 A. Well, Lucid eventually became</p> <p>22 owned by FXCM.</p> <p>23 Q. And was there a similar</p> <p>24 connection between FXCM and Sun?</p> <p>25 A. No.</p>

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<p>1 CONFIDENTIAL - MUCHINSKY</p> <p>2 Q. What about EFFEX?</p> <p>3 A. Different than Lucid, yes, as</p> <p>4 far as I knew.</p> <p>5 Q. In your experience, did FXCM</p> <p>6 interact with these three funds in a</p> <p>7 different manner than they did with,</p> <p>8 say, banks or other types of liquidity</p> <p>9 providers?</p> <p>10 MS. COREY: Objection to</p> <p>11 form.</p> <p>12 A. Excluding Sun, I think they</p> <p>13 probably interacted quite differently</p> <p>14 with Lucid and EFFEX.</p> <p>15 Q. And how so? Starting with</p> <p>16 Lucid.</p> <p>17 A. I don't remember when the</p> <p>18 Lucid FXCM deal took place, but</p> <p>19 obviously they were owned by FXCM.</p> <p>20 Q. And how did FXCM interact</p> <p>21 differently with EFFEX, compared to</p> <p>22 other types of liquidity providers?</p> <p>23 A. It was just, it was a closer</p> <p>24 relationship.</p> <p>25 Q. In what ways?</p>	<p>Page 162</p> <p>1 CONFIDENTIAL - MUCHINSKY</p> <p>2 A. I don't understand.</p> <p>3 Q. I can rephrase. So at the</p> <p>4 time of this email, the discussion that</p> <p>5 you're having with Mr. Niv and</p> <p>6 Mr. Ahdout, if I understood your prior</p> <p>7 testimony correctly, was that the</p> <p>8 result of this conversation was to not</p> <p>9 disclose to other liquidity providers</p> <p>10 what EFFEX's market share was at this</p> <p>11 time; is that correct?</p> <p>12 A. No. He isn't telling me to</p> <p>13 exclude them at all.</p> <p>14 Q. Sorry, not to -- whether or</p> <p>15 not to exclude them; whether or not to</p> <p>16 share EFFEX's market share or a</p> <p>17 different calculation, as opposed to</p> <p>18 the liquidity provider's share just</p> <p>19 based on the total volume.</p> <p>20 A. That was a nonissue, because</p> <p>21 we never shared it, anyway. We never</p> <p>22 shared EFFEX's market share with anyone</p> <p>23 else.</p> <p>24 Q. Okay, so then I guess the</p> <p>25 question that I'm getting at is that</p>
<p>1 CONFIDENTIAL - MUCHINSKY</p> <p>2 A. You know, John just had, you</p> <p>3 know, John had been an employee at one</p> <p>4 point. He had a good relationship with</p> <p>5 the partners. So from that</p> <p>6 perspective, it was closer than other</p> <p>7 liquidity providers.</p> <p>8 Q. Were the rebate payments that</p> <p>9 EFFEX made to FXCM a factor in that</p> <p>10 relationship between EFFEX and FXCM?</p> <p>11 A. I wouldn't know about that.</p> <p>12 MS. COREY: Objection to</p> <p>13 form.</p> <p>14 Q. Was there a time when Mr. Niv</p> <p>15 or Mr. Ahdout instructed you</p> <p>16 differently in terms of disclosing</p> <p>17 EFFEX's market share to other liquidity</p> <p>18 providers? Let me back up first.</p> <p>19 So you said here, It was</p> <p>20 determined not to share EFFEX's market</p> <p>21 share with other liquidity providers;</p> <p>22 is that correct? Here, meaning at the</p> <p>23 time of this email.</p> <p>24 MS. COREY: Objection to</p> <p>25 form. Sorry.</p>	<p>Page 163</p> <p>1 CONFIDENTIAL - MUCHINSKY</p> <p>2 here, the decision was not to share</p> <p>3 that information, and if I understand</p> <p>4 correctly, you're saying that you had</p> <p>5 similar conversations at other times,</p> <p>6 but you didn't, at another time,</p> <p>7 disclose EFFEX's market share to other</p> <p>8 liquidity providers?</p> <p>9 MS. COREY: Objection to</p> <p>10 form.</p> <p>11 A. No. EFFEX's market share was</p> <p>12 never shared, and he's not telling me</p> <p>13 to exclude them from the calculation</p> <p>14 here.</p> <p>15 Q. Was there a time where</p> <p>16 Mr. Niv and Mr. Ahdout did instruct you</p> <p>17 to exclude EFFEX from market share</p> <p>18 calculations?</p> <p>19 A. I don't remember. It may</p> <p>20 have happened later on, but at this</p> <p>21 point in time I'm asking for direction,</p> <p>22 and that's not the direction I'm being</p> <p>23 given.</p> <p>24 Q. I'm going to introduce</p> <p>25 another exhibit.</p>

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<p style="text-align: right;">Page 178</p> <p>1 CONFIDENTIAL - MUCHINSKY 2 A. Not that I recall. 3 Q. And what did you understand 4 Mr. Niv to mean by rebates? Rebate, 5 sorry. 6 A. Rebate would be similar to 7 what we saw on that invoice, which 8 would be a dollar per million. 9 Q. In payments for order flow 10 that you pointed out earlier? 11 A. Correct. 12 Q. Do you know why those 13 payments were referred to as rebates? 14 A. I don't know, I don't know 15 why Drew called them rebates. 16 Q. Were you aware of Mr. Niv or 17 others at FXCM changing the rate or 18 amount of rebates that they would 19 request from EFFEX? 20 A. I think at one point there 21 was a reduction. I seem to remember 22 that. 23 Q. Do you recall being -- were 24 you involved in any conversations 25 concerning changing the rate of</p>	<p style="text-align: right;">Page 180</p> <p>1 CONFIDENTIAL - MUCHINSKY 2 (Recess.) 3 THE VIDEOGRAPHER: We are 4 back on the record, the time is 5 2:23, this is the beginning of 6 media file 5. 7 Q. Welcome back, Ms. Muchinsky. 8 I've introduced Exhibit 13. Do you 9 have that up in front of you? 10 (Exhibit 13, marked for 11 identification, Bates stamped 12 GLBR_00217365.) 13 A. I do. 14 Q. For the record, Exhibit 13 is 15 Bates stamped GLBR_217365. Ms. 16 Muchinsky, does this appear to be a 17 transcript for an instant messaging 18 conversation between Mr. Dittami and 19 yourself? 20 A. Yes, it is. 21 Q. And this is from 22 October 2012, right, yes? 23 A. Yes. 24 Q. Do you recall what platform 25 you used to instant message with</p>
<p style="text-align: right;">Page 179</p> <p>1 CONFIDENTIAL - MUCHINSKY 2 payment, the rate per million of those 3 payments? 4 A. No, I wouldn't have been in 5 the conversation. I would have been 6 told after the fact. 7 Q. We're done with that 8 document. I'll be introducing another. 9 This will be Exhibit 13. Let me know 10 when you see it. 11 A. Can I have just one minute, 12 please? Sorry, I just need to step 13 away. 14 Q. No problem. 15 THE VIDEOGRAPHER: Can we go 16 off the record for a media change? 17 MR. BAKER: Want to take 18 five, 10 minutes now for a break? 19 THE WITNESS: That would be 20 great, thank you. 21 MS. COREY: Let's do that. 22 THE VIDEOGRAPHER: Thank you. 23 The time is 2:16, we're going off 24 the record. This is the end of 25 media file four.</p>	<p style="text-align: right;">Page 181</p> <p>1 CONFIDENTIAL - MUCHINSKY 2 Mr. Dittami in 2012? 3 A. I don't recall. 4 Q. Would this have been FXCM's 5 instant messaging platform? 6 A. Yes. I -- yes. 7 Q. And it certainly appears 8 Mr. Dittami had access to that 9 platform, as there's a conversation 10 here; is that correct? 11 A. Yes. 12 Q. And Mr. Dittami, as indicated 13 by his email, John@EFFEXcapital.com, I 14 think before you mentioned if he had an 15 FXCM email, he could use the instant 16 messaging service, but it appears he 17 was using his EFFEX email; is that 18 accurate? 19 A. From this transcript it looks 20 that way. I don't know how the two 21 would have interacted. 22 Q. And did anyone else, to your 23 knowledge -- sorry. 24 To your knowledge, did anyone 25 else at EFFEX have access to the FXCM</p>